

IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION

EDWARD HOLMES, )  
                      )  
Plaintiff,         )  
                      ) 02 C 7266  
v.                    )  
                      ) Magistrate Judge Brown  
DR. KUL SOOD,      )  
                      )  
Defendant.         )

**PLAINTIFF'S SIXTH MOTION IN LIMINE TO BAR  
REFERENCE TO THE LENGTH OR DETAILS OF MR. HOLMES' SENTENCE**

NOW COMES Plaintiff, EDWARD HOLMES, by his attorneys, LOEVY & LOEVY, respectfully moves this Honorable Court to enter an order barring reference to the length of details of Mr. Holmes' sentence. In support, Plaintiff states as follows:

As discussed in Plaintiff's first motion *in limine*, by the very nature of this case, the jury will know that Plaintiff had been convicted of a crime and was incarcerated during the events at issue. The jury need not know, however, any other facts regarding the conviction. Amongst those facts is the length of the sentence and evidence of the length of the sentence should be barred pursuant to Plaintiff first motion *in limine*. Plaintiff brings this separate motion *in limine* because evidence of the length of Plaintiff's sentence, in particular, is likely to cause jury confusion and engender unfair prejudice. This is due to the original posture of his sentencing as well as the fact that the judge cut his sentence short when he ordered his release on October 12, 2001.

On September 13, 2001, the Will County Circuit Court sentenced Plaintiff to three years for a possession offense that he was arrested for in March 2001. *See Exhibit A (9/13/01 Hearing*

Transcript) at 16. However, both prior to and after pronouncing the sentence, the court spoke of the fact that it was considering a shorter sentence, on the order of two months confinement followed by a residential drug treatment program. *Id.* Indeed, the last thing the judge said to Mr. Holmes at the sentencing hearing indicated that he was imposing the sentence only temporarily while he continued to consider it and that he did not intend it to be his final pronouncement:

Now, Mr. Holmes, I still have one more date to reconsider what I just did. And your attorney just picked the date. So I may end up changing my mind depending upon what he puts in that motion. That's always a possibility. But if we are going to do treatment, we are going to do it my way.

*Id.* at 18.

On October 11, 2001, the Court held another hearing on the sentencing issue and considered whether Plaintiff should be released from jail and placed into a residential treatment program. *See Exhibit B (10/11/01 Transcript).* The court concluded that hearing as follows:

I tell you what. I will take the matter under advisement further. You come back with a report that tells me whether they will take him (sic) residentially extended period of time. I am not talking about two weeks and he is out again. I want three to six months minimum, and if they will do that, I will further consider my alternatives here.

*Id.* at 7. Finally, on October 12, 2001, after social worker Julie Sterr pleaded with the judge to release Mr. Holmes because the jail was refusing to care for his colon condition, the judge sentenced him to time served and 6 months probation. *See Exhibit C (court docket).*

Thus, the three year sentence is not a fair reflection of the court's view of the seriousness of the offense nor of the retribution due Mr. Holmes, and if Defendant tried to suggest that the length of the sentence was relevant that would be an unfair mischaracterization. However, it is impossible to convey this to the jury without going into complicated explanations of sentencing

procedures and, more importantly, without unraveling the motion *in limine* on substance abuse. Plaintiff should not be forced into such a position on an issue with no or little relevance to the case. *See Eastern Natural Gas Corp. v. Aluminum Co. of America*, 126 F.3d 996 (7th Cir. 1997) (trial court properly prohibited introduction of withdrawn legal pleadings due to risk of jury confusion); *United States v. LeFevour*, 798 F.2d 977 (7th Cir. 1986) (in judicial corruption case, trial court properly refused evidence of other instances where judge dismissed tickets because of risk of jury confusion).

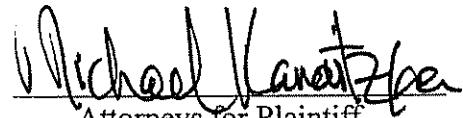
### **Conclusion**

The only relevant facts about Plaintiff's sentence is that he was sentenced on September 13, 2001 and that the judge ordered Plaintiff released and put on probation on October 12, 2001. Nothing else is relevant to Plaintiff's medical treatment while in jail, and anything more is potentially unfairly prejudicial and runs a serious risk of confusing the jury as to the court's actual adjudicative processes. Moreover, it would force Plaintiff to open up the area of substance abuse, which he should not have to do. Accordingly, the Court should bar evidence on the length or other details of Plaintiff's sentence.

### **Local Rule 37.2 Statement**

Prior to filing this motion, Plaintiff's counsel disclosed the motion to defense counsel, along with a short description of what specifically Plaintiff sought to bar and why. On March 21, 2006 at 3:30 p.m. at the location of the law offices of Charysh & Shroeder, Plaintiff's counsel, Michael Kanovitz and Amanda Antholt, met with Defendant's counsel, Michael Charysh and Richard A. Tjepkema, to discuss this motion. Unfortunately, after good faith attempts to resolve this issue, the parties were unable to reach an accord.

RESPECTFULLY SUBMITTED,

  
\_\_\_\_\_  
Michael Kanovitz  
Attorneys for Plaintiff

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Michael Kanovitz  
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1           IN THE CIRCUIT COURT OF THE TWELFTH JUDICIAL CIRCUIT  
2           WILL COUNTY, ILLINOIS

3       THE PEOPLE OF THE  
4       STATE OF ILLINOIS,

5                 Plaintiff,

6                 vs.

7       EDWARD HOLMS,

8                 Defendant.

}

No. 01 CF 459

9

10           REPORT OF PROCEEDINGS of the hearing before the  
11       Honorable Daniel J. Rozak, on the 13th day of September, 2001.

12

13           APPEARANCES:

14

15       MR. FREDERICK HARVEY,  
16       Assistant State's Attorney,  
17       appeared on behalf of the People;

18

19       MR. JASON STRZLECKI,  
20       Assistant Public Defender,  
21       appeared on behalf of the Defendant.

22

23

24       Annamarie Rimkevicius, CSR  
14 West Jefferson Street  
Joliet, Illinois 60432

1           THE COURT: Edward Holms. 2001 CF 459.

2           MR. HARVEY: Judge, up today for sentencing hearing.

3           MR. STRZLECKI: That's correct. I also have before the  
4 Court a Petition To Elect TASC Treatment.

5           THE COURT: Are you ready for sentencing?

6           MR. HARVEY: The State is ready.

7           THE RESPONDENT: We would ask that Mr. Holms undergo the  
8 evaluation to see if he is in fact acceptable to TASC prior to  
9 the actual sentencing hearing.

10          THE COURT: State?

11          MR. HARVEY: Judge, State will be announcing ready for  
12 sentencing.

13          THE COURT: Why are we waiting to the date of sentencing  
14 to request a TASC evaluation?

15          MR. STRZLECKI: Your Honor, actually the petition itself  
16 was filed back on August 15th. I am not sure exactly why he was  
17 scheduled for this date other than the fact that perhaps in  
18 going through the computer, this date showed up and somehow  
19 clerically it got scheduled for this particular date as a matter  
20 of, hopefully, convenience.

21          MR. HARVEY: We did receive Mr. Strzlecki's motion back  
22 on August 15th.

23          THE COURT: How many weeks? Eight? Four? For TASC?

24          MR. STRZLECKI: I am not certain how long it normally

1 takes.

2 THE CLERK: I think four to six weeks.

3 THE COURT: So your client is a drug addict or, at least,  
4 that's what it appears.

5 MR. STRZLECKI: That's correct, your Honor.

6 THE COURT: And if I were to send him for a urinalysis  
7 right now he would most likely not pass, is that correct?

8 THE DEFENDANT: Beg your pardon?

9 MR. STRZLECKI: Your Honor, Mr. Holmes does indicate that  
10 although he does have some drugs in his system at this time,  
11 they are, in fact, prescription drugs. And he is --

12 THE COURT: Prescription for what?

13 THE DEFENDANT: For Methadone.

14 THE COURT: Methadone?

15 THE DEFENDANT: Yes, sir. And Bakprofine.

16 THE COURT: What?

17 THE DEFENDANT: Bakprofine.

18 I cannot think of the name. I did not write it  
19 down.

20 THE COURT: What is the nature of your Social Security  
21 Disability?

22 THE DEFENDANT: I get SSI.

23 THE COURT: Pardon?

24 THE DEFENDANT: I receive SSI.

1                   What is the nature of it?

2                   THE COURT: Yes.

3                   THE DEFENDANT: Would you explain to me the nature?

4                   THE COURT: Why are you getting SSI?

5                   THE DEFENDANT: My illness: My bones and stuff are  
6 deteriorating in my body, sir.

7                   THE COURT: From all the cocaine or whatever he is, you  
8 are talking?

9                   THE DEFENDANT: I guess from my health because I have  
10 false hips.

11                  THE COURT: Pardon?

12                  THE DEFENDANT: I have false hips. You know, they got  
13 all kind of surgery, your Honor. Bowels, colostomy, and all. I  
14 come from -- it is just illness.

15                  MR. HARVEY: The PSI, the only mention of the illness  
16 just in the reading off of Section Fifteen, it just says that  
17 he has pretty poor health. He had a quote from the Defendant,  
18 he had a hip replacement and seven months ago had rectum  
19 surgery.

20                  THE DEFENDANT: Colostomy bag. (Showing all of his  
21 scars on his stomach)

22                  THE COURT: Well, I am looking at page 8 of the Pre  
23 Sentence Report. And it says that you went to South Suburban  
24 Council on alcoholism and substance abuse, Men's Residential

1 Program. Was successfully discharged in May of 1998.  
2 Apparently, not as successfully as they thought because he is  
3 back here today.

4 So he has done the residential. And he entered  
5 Provena Saint Joe's Medical Center Outpatient in '98. And no  
6 incident of relapse. Apparently, they were mistaken. And then  
7 prior to all of this, he was in Christ Hospital Detox Program  
8 for two and a half weeks. They don't say what the result of  
9 that was; but, apparently, not successful either.

10 So what we want to do, I guess, then is try this  
11 one more time in spite of the fact that nothing ever worked in  
12 the past.

13 MR. STRZLECKI: Your Honor, what I would suggest is TASC  
14 is known to be a much more stringent program than some of the  
15 programs that he has already been through. I think we all know  
16 that TASC is a very difficult type of probation for somebody to  
17 complete successfully. But it has been known to be more  
18 effective than some of the others. Some of the over programs  
19 that one might enter into voluntarily.

20 So it is our hope that in fact this will prove to  
21 be the case for Mr. Holms.

22 THE COURT: When is the last time he has had any dope?  
23 Street dope, not any prescription.

24 THE DEFENDANT: Beg your pardon?

1           THE COURT: Pardon?

2           THE DEFENDANT: What did you say now?

3           THE COURT: When is the last time you had a shot of  
4       heroin or a snort of cocaine?

5           THE DEFENDANT: I don't shoot cocaine. I --

6           THE COURT: When is the last time you had any heroin or  
7       cocaine?

8           THE DEFENDANT: I ain't have no heroine in, day before  
9       a month.

10          THE COURT: Three or four months?

11          THE DEFNDANT: Three or four years.

12          THE COURT: Three or four years?

13          THE DEFENDANT: Heroin.

14          THE COURT: How about cocaine?

15          THE DEFENDANT: I had some cocaine.

16          THE COURT: When was the last time?

17          THE DEFENDANT: About two days ago.

18          THE COURT: Pardon?

19          THE DEFENDANT: About two days ago.

20          THE COURT: Two days ago. Okay.

21           When is the last time you were hospitalized for  
22       anything?

23          THE DEFENDANT: For my hip. I just got out. My  
24       bowels were blocked on me like last month. Last month.

1               THE COURT: Other than your prescription medication, what  
2 unique medical care are you under right now?

3               THE DEFENDANT: They got me on a machine for my, for  
4 my bones, you know, to help pains in my bones.

5               THE COURT: What machine? Who does?

6               THE DEFENDANT: Saint Joe's. Doctor Martel.

7               THE COURT: How often do you go for there of?

8               THE DEFENDANT: I got it at the house. I have to keep  
9 it. I just did not have it on me today. I wore it last time.

10              THE COURT: What is the name of the machine? You don't  
11 know?

12              THE DEFENDANT: I can't recall the name of it, sir.

13              THE COURT: How big is it?

14              THE DEFENDANT: I wear it on my side. I got four  
15 patches through it, you know. It is an electric machine. It is  
16 shock wave, sending shock waves through your body.

17              THE COURT: It is for pain?

18              THE DEFENDANT: Yes, sir. For pain.

19              THE COURT: With all of these medical problems, is TASC  
20 going to take him? Because it sounds to me if it is anything,  
21 it would be a residential program.

22              MR. STRZLECKI: Your Honor, it may very well turn out  
23 that he is recommended for an inpatient program. And in fact,  
24 it might be a rather lengthy stay, but we are hoping that would

1       be the most suitable course of action, hopefully the most  
2       productive, and most helpful.

3           THE COURT: And you really want to break this habit, is  
4       that right, Mr. Holms?

5           THE DEFENDANT: Yes, sir. I went through, I went  
6       through the treatment on my own. I had a drinking problem.  
7       That's where it started out I stopped drinking.

8           THE COURT: The last person that came in -- I should not  
9       say "the last one." A couple of weeks ago I think it was, came  
10      in here, from all of these baloney reports from their treatment  
11      through TASC, how they completed all of the residential and  
12      outpatient. They were doing all of the counseling. Everything  
13      was just hunky-dory. I said, Fine. Go get a urinalysis at the  
14      time, come back in thirty minutes. Guess what? They didn't  
15      pass.

16           THE DEFENDANT: Yes, sir.

17           THE COURT: So I -- it has been my observation that  
18       usually those TASC residential programs are much more effective  
19       when they are preceded by the Judge Rozak Dry Out Program before  
20       you go to their residential program. That usually means you go  
21       to the County Jail where you cannot get anything for about two  
22       months. Then you go to the residential treat. Much more  
23       successful. And if you want to beat this, to be perfectly  
24       honest with you, that's what I was thinking. I have done it

1 before. That's the only way it has every worked before that I  
2 have seen because I know what will happen. You will go right  
3 back out there and you will smoke a little dope tonight,  
4 tomorrow or the day after. Do not tell me "no" because you are  
5 also telling me your an addict which means you cannot help  
6 yourself. You can say "no" all you want but when the urge hits  
7 you, you will have to do it and you have no control over it.  
8 The only way we can control it to do exactly what they did in  
9 the Wolfman Movie. That's to lock them up in the cell when the  
10 full moon came out. It didn't matter. He was stuck. And  
11 that's what we have to do when your full moon comes out. You  
12 will be stuck. And you are not going to be able to get at  
13 anything.

14 THE DEFENDANT: Your Honor.

15 THE COURT: Otherwise, you really did not want to break  
16 the habit. By looking at your criminal record -- you have been  
17 through the Department of Corrections how many times already?

18 MR. HARVEY: Four, Judge.

19 THE COURT: Four times.

20 THE DEFENDANT: I have not been through the Department  
21 of Corrections, no, sir.

22 MR. HARVEY: Three times.

23 THE COURT: You sure have --

24 THE DEFENDANT: No, sir.

1                   THE COURT: One, two, three.

2                   THE DEFENDANT: Sir, I have not been in the Department  
3                   of Corrections one time.

4                   THE COURT: Never?

5                   THE DEFENDANT: Once. With my wife. I went to the  
6                   Department of Corrections once.

7                   THE COURT: One year, one year, one year, and three  
8                   years; but three separate arrests; all of which got you  
9                   Department of Corrections sentences. So the way I look at it,  
10                  those are three separate felonies which were preceded by yet  
11                  another felony so that's four prior felony dispositions. You  
12                  have gone to the Department of Corrections on three of them  
13                  albeit concurrent. And looking at this Pre Sentence Report,  
14                  here, it would seem that you maybe, maybe I am not sure yet, but  
15                  maybe subject to an extended term. That 1991 may get you an  
16                  extended term. The disposition was in November '91.

17                  MR. HARVEY: It would.

18                  THE COURT: You are subject to an extended term which  
19                  means six years in prison with that record. I would not be a  
20                  bit surprised. I do not want to prejudge your case because I  
21                  have not heard everything at sentencing yet but I would not be a  
22                  bit surprised if the State would ask for that six years and I  
23                  just may end up giving you six years or we could do a couple of  
24                  months in the County Jail. I would take a look at what TASC HAS

1 to say and then I will see if you end up on TASC Problem, which  
2 may do you some good so I guess you have got a choice before  
3 you: Sixty days or six years, maybe. Sound like a real easy  
4 choice to me.

5 MR. STRZLECKI: Your Honor, I would like an opportunity  
6 to speak with Mr. Holms just briefly.

7 THE COURT: Okay.

8 MR. STRZLECKI: Perhaps we will have some sort of an  
9 agreement.

10 THE COURT: I will pass it for a little bit.

11 (Whereupon, proceedings were had in other causes.)

12 THE COURT: Edward Holms. 200a CF 459. Okay. Where are  
13 we are at?

14 MR. STRZLECKI: Your Honor, I have had an opportunity to  
15 speak with Mr. Holms. And at this we are still seeking to have  
16 Mr. Holms validated for T.A.S.C. Probation. I do understand the  
17 Court's concern. And I understand that the Court has had  
18 various experiences with people who have entered into the  
19 T.A.S.C. Probation Program. I would suggest to the Court that a  
20 period of being in custody, Will County Adult Detention  
21 Facility, may not be the best approach for Mr. Holms. He  
22 definitely does have a substance abuse problem and there is some  
23 concern that that will continue to go on during any time which  
24 he might be waiting to be allowed into TASC. However, Mr. Holms

1 does have a whole host of health problems. And his health  
2 problems are certainly unique. There are, there is always, of  
3 course, the argument that any health problems can be taken care  
4 of adequately in the Will County Adult Detention Facility. The  
5 argument is always made that they have adequate care and  
6 adequate professionals to provide that care at the facility;  
7 however, your Honor, it has been my experience that, maybe not a  
8 direct experience but the word that I have received from many  
9 individuals is that, in fact, proper care is not always given in  
10 the Will County Adult Detention Facility. And somebody in Mr.  
11 Holms' condition, I would suggest that it would be most  
12 appropriate that he be allowed to continue to receive whatever  
13 treatments are necessary from his own private personal  
14 physician.

15 Again, I do understand the Court's position and the  
16 Court's concern. Obviously, Mr. Holms has been through some  
17 treatment programs in the past. And those apparently have not  
18 been entirely successful despite the indications from those  
19 facilities that they were successful. But nonetheless i do not  
20 believe that that's any reason to give up hope on Mr. Holms.  
21 And hope and we feel that this a period of T.A.S.C. Probation  
22 might be the best remedy here. However, again, I would stress  
23 that I don't believe that a period of incarceration in the Will  
24 County Adult Detention Facility is in this case necessary or

1 proper.

2 (Assistant State's Attorney Steven Platek steps  
3 up.)

THE COURT: Okay. Then we will proceed to sentencing.

5 State have any modifications to the Pre Sentence Report?

6 MR. PLATEK: No, your Honor.

7 THE COURT: Defense have any modifications to the Pre  
8 Sentence Report?

9 MR. STRZLECKI: No, your Honor.

10 THE COURT: Does the State have anything in aggravation  
11 other than what is in the Pre Sentence Report?

12 MR. PLATEK: No, your Honor.

13 THE COURT: Does the Defense have any modifications to  
14 the -- excuse me. Any evidence in mitigation other than what is  
15 in the Pre Sentence Report?

16 MR. STRZLECKI: Nothing further, your Honor.

17 THE COURT: Argument and recommendation by the State?

18 MR. PLATEK: Your Honor, it appears from a Pre Sentence  
19 Investigation that he has a drug problem that spans from the  
20 late seventies until today. And if he chooses to continue on  
21 with this, I think that we are left with no other choice but to  
22 sentence him to the Department of Corrections. And if he wants  
23 to spend a little time of his life, a little time drug free, in  
24 the Department of Corrections, then that's what he is

1       essentially telling us. If we do not put him in the Department  
2       of Corrections, he will remain on drugs. And I think that's the  
3       only choice that we have is to put him in the Department of  
4       Corrections. Nothing further.

5                 THE COURT: Argument and recommendations by the Defense.

6                 MR. STRZLECKI: Your Honor, I don't think that the State  
7       can seriously be suggesting that time in the Department of  
8       Corrections is some sort of cure-all for drug addiction,  
9       especially drug addiction that has lasted this long. I think it  
10      is certainly inappropriate to think that by putting Mr. Holms in  
11      the Department of Corrections, that somehow he will come out not  
12      <TPHAT>. This is somebody who needs treatment. We recommend  
13      that he be allowed to under go the evaluation for TASC  
14      Probation. We believe rehabilitation and cure of his drug  
15      addiction is at that core of what is necessary here.

16                 I ask your Honor to not be focused so much on the  
17       punitive nature of Mr. Holm's sentence as the rehabilitative  
18       nature of his sentence. This is an individual who is still a  
19       worthwhile person, who has had a difficult time, who has had a  
20       problem. He has obviously made attempts at treatment; and,  
21       apparently, those attempts have failed. Whether or not that's  
22       the fault of Mr. Holms, I think there is some doubt as to that.

23                 Apparently, as I stated earlier, the places that he  
24       has gone for treatment have indicated and suggested that in fact

1       they were under the impression he was cured; they had done their  
2       job. Apparently, they had not and Mr. Holms still has this  
3       problem. Nonetheless, as I stated earlier, that's no reason to  
4       give up hope. There is no reason to not seek additional  
5       treatment. This is by, I think everybody's account there is an  
6       illness. Certainly, Mr. Holms is not giving up on treatment for  
7       his other illnesses, his other health-related problems. And he  
8       certainly does not want to give up hope incurring his other  
9       health-related problem, that being his drug addiction. And,  
10      therefore, your Honor, we still suggest that in lieu of the time  
11      in the Department of Corrections, that he be placed on, if not a  
12      period of straight probation, that he be allowed to undergo an  
13      evaluation for TASC.

14            MR. PLATEK: Your Honor, just briefly. When I respond,  
15       I am not suggesting that the Department of Corrections is a  
16       cure-all. Obviously, it is not since he has been to the  
17       Department of Corrections and he continues to have this problem.  
18       What I am suggesting is that I would rather and I think we owe  
19       it to him to ensure that he spends some time of his life drug  
20       free and I am suggesting that the time in the Department of  
21       Corrections drug free is probably better or is better than being  
22       on the streets and being on drugs. The fact that he would have  
23       to spend his time drug free in the Department of Corrections is  
24       essentially a decision that he makes and that we owe it to him.

1               THE COURT: Okay. Anything else in his Defense?

2               MR. STRZLECKI: Nothing further.

3               THE COURT: Well, as an aggravating factor, he certainly  
4 has a substantial prior record. So much so that he is still  
5 eligible for an extended term. However, the one case that would  
6 make him subject to that extended term is pretty close to the  
7 period of being outside the ten years. It is not yet but we are  
8 pretty close to it. So I think that is a mitigating factor. It  
9 has been that long, that Class Two Felony.

10               Also, his medical condition is certainly a  
11 mitigating factor to be taken into consideration. The fact that  
12 he has gone through treatment before, several times, none of it,  
13 absolutely none of it, has done him any good. And it puts me in  
14 a dilemma. I do not know what to do. I would like to help Mr.  
15 Holmes, but I think that there is only one way to do that.

16               And he does not seem to be willing. That leaves me  
17 with very little in the alternative, considering his prior  
18 record. So I am going to sentence him to three years in the  
19 Illinois Department of Corrections. Credit for how many days  
20 served?

21               MR. PLATEK: Your Honor, he posted bond. He was picked  
22 up March 19th. I think he posted bond the next day, two days.

23               THE COURT: Two dates credit.

24               Now, sir, you still have a right to appeal. If you

1 wish to appeal, you must first file a motion here in the trial  
2 court asking me to allow you to withdraw your plea of guilty  
3 and/or reconsider the sentence that I just imposed. You have  
4 thirty days within which to do that. If you do not do that  
5 within thirty days, you will lose your right to appeal. If you  
6 file that motion and it is denied, you will then have 30 days  
7 from the date of the denial to file your Notice Of Appeal.

8                 Also, if you are indigent, a copy of a transcript  
9 of these proceedings can be supplied to you at no cost and an  
10 attorney can be appointed to represent you at no cost in the  
11 preparation of that motion or the appeal.

12                 Do you understand all of that, sir?

13                 THE DEFENDANT: Yes.

14                 THE COURT: Any questions over anything we covered?

15                 MR. PLATEK: Your Honor, he does -- he did have A bond  
16 posted. I would ask that, that apply to the costs.

17                 THE COURT: That's ordered. And a Judgment fort he  
18 remainder. Do you have any questions over any of the questions?

19                 THE DEFENDANT: Can I get my building taken care of?

20                 THE COURT: That's not a question. Do you have any  
21 questions?

22                 THE DEFENDANT: Can I file my appeal now?

23                 THE COURT: I will not stay the mittimus. What I cannot  
24 do -- you cannot file your Notice of Appeal right now. You will

1 have to file the motion that I suggested. What I will do is set  
2 it over. I will give you a date right now to file my motion --  
3 your Motion To Reconsider My Finding On The Sentence. What date  
4 would you like to do that?

5 MR. STRZLECKI: Your Honor, I would suggest two weeks.

6 THE COURT: I will tell you right now I will grant your  
7 motion for the TASC evaluation in the meantime. All right. So  
8 that's granted, in spite of the sentence that I just imposed.  
9 And you can have him evaluated in the County Jail.

10 What date do you want?

11 MR. STRZLECKI: Your Honor. I would suggest then a four  
12 week date. That should give them time to perform the  
13 evaluation.

14 THE DEFENDANT: That would make it October 11 at 9:30  
15 and his mittimus to Department of Corrections is stayed until  
16 then.

17 Now, Mr. Holmes, I still have one more date to  
18 reconsider what I just did. And your attorney just picked the  
19 date. Do you understand? So I may end up changing my mind  
20 depending upon what he puts in that motion. That's always a  
21 possibility. But if we are going to do treatment, we are going  
22 to do it my way. Do you understand?

23 THE DEFENDANT: (nodding head and crying)

24 THE COURT: See you then.

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2 (Which were all of the proceedings had  
3 in the above-entitled cause this date.)

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IN THE CIRCUIT COURT FOR THE TWELFTH JUDICIAL CIRCUIT  
WILL COUNTY, ILLINOIS

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7 I, Annamarie Rimkevicius, a Certified Shorthand Reporter  
8 for the Circuit Court of Will County, Twelfth Judicial Circuit,  
9 do hereby certify that I reported in shorthand the proceedings  
10 had on the trial in the above entitled cause; that I thereafter  
11 caused the foregoing to be transcribed into typewriting, which I  
12 hereby certify to be a true and accurate transcript of the  
13 proceedings had before the Honorable Daniel J. Rozak,  
14 Judge of said court.

7

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21 Dated this 27th day of  
22 September, 2002.

23

24

*Annamarie Rimkavicius*  
Annamarie Rimkavicius  
License No. 084-002011

1 STATE OF ILLINOIS )  
2 ) SS.  
COUNTY OF WILL )

3 IN THE CIRCUIT COURT OF THE 12TH JUDICIAL CIRCUIT  
4 WILL COUNTY, ILLINOIS

5 THE PEOPLE OF THE STATE OF ILLINOIS, )  
6 ) Plaintiff,)  
7 -vs- ) NO. 2001 CF 459  
8 EDWARD C. HOLMES, )  
9 ) Defendant.)

10 REPORT OF PROCEEDINGS had at the hearing of the  
11 above-entitled cause before the Honorable DANIEL J. ROZAK,  
12 on the 11th day of October, A.D., 2001.

13

14 APPEARANCES:

15 HON. JEFFERY J. TOMCZAK, State's Attorney  
16 BY: MR. CHRISTOPHER MESSINA and MR. STEVE PLATEK,  
17 Assistant State's Attorneys  
Appeared on behalf of the People;

18 MR. JASON STRZELECKI, Assistant Public Defender  
Appeared on behalf of the Defendant.

19

20

21

22 STEVE VITHOULKAS, CSR, RPR, RMR  
23 Will County Courthouse  
Joliet, IL 60432

24

THE COURT: Edward Holmes, 2001 CF 459. Motion to reconsider sentencing or sentence, is that right?

MR. STRZELECKI: That's correct.

MR. MESSINA: Is there a 604(d) motion attached, Judge?

THE COURT: No.

MR. MESSINA: We can't do it without one, Judge.

THE COURT: I don't see one. Did you file that?

MR. STRZELECKI: I did not file a certificate, your Honor.

THE COURT: Okay. Then do we need another date?

MR. STRZELECKI: Your Honor, if I can have a few moments, perhaps I can just prepare a certificate and file that instanter.

THE COURT: Okay. I will pass it for a little bit.

Let me know when you are ready.

(Matter passed and recalled.)

MR. STRZELECKI: Edward Holmes, 2001 CF 459.

THE COURT: Okay.

MR. STRZELECKI: Your Honor, at this time I would seek leave to file a certificate pursuant to Supreme Court Rule 604(d) instanter.

THE COURT: Okay. Here are the copies. Okay. On your motion to reconsider sentence then, State is ready?

1           MR. PLATEK: Yes, your Honor.

2           THE COURT: Okay. Argument by the Defense?

3           MR. STRZELECKI: Your Honor, if you will recall at the  
4 original sentencing, there was some talk and suggestion made  
5 that Mr. Holmes would be eligible -- or might be eligible  
6 for T.A.S.C. probation. In fact, the petition for  
7 evaluation of T.A.S.C. probation was made and, in fact, an  
8 evaluation took place, and Mr. Holmes was accepted, found  
9 acceptable for T.A.S.C. probation. The recommendation  
10 specifically indicates that he should be placed on an  
11 outpatient substance abuse treatment.

12           Your Honor had indicated at the time of the  
13 original sentencing that there may, in fact, be a  
14 possibility that if Mr. Holmes was to be found acceptable  
15 for T.A.S.C. probation, that your Honor might be inclined to  
16 reconsider the sentence in this matter. Originally  
17 Mr. Holmes was sentenced to a period of incarceration in the  
18 Department of Corrections. As was discussed at the original  
19 sentencing hearing, it's our position that Mr. Holmes is  
20 actually a good candidate for probation, specifically  
21 T.A.S.C. probation. He does have a number of health  
22 problems which would make incarceration in the Department of  
23 Corrections more difficult than for most.

24           We feel that his real problem is not an inherent

1           criminal nature, but rather a problem with drug dependency.  
2           This has been a problem that's been ongoing for most of  
3           Mr. Holmes' life. He has sought treatment for these  
4           problems several times throughout his life at different  
5           facilities. Consistently those facilities found him to be,  
6           in effect, cured once they were done treating him. But,  
7           obviously, that was not the case. This is a problem that  
8           has been ongoing and to date has not been resolved. We are  
9           hoping by sentencing him to a period of T.A.S.C. probation,  
10          that the outpatient substance abuse treatment recommended by  
11          T.A.S.C. will be of some help to Mr. Holmes and will  
12          alleviate the actual core problem that he has had throughout  
13          his life.

14 THE COURT: Okay. State?

15 MR. PLATEK: Your Honor, I ask that you deny the  
16 motion. This defendant has a history of drug use going all  
17 the way back to 1978. He has four prior felony convictions  
18 regarding drug use. At each and every decade he has had a  
19 conviction for some drug-related felony since the '70s.  
20 Also, throughout this whole time, he, as Counsel stated, has  
21 received counseling, and it has not worked. Counsel hasn't  
22 said anything that would indicate that that would change  
23 now.

Also, I would submit to the Court that the best

1 place for him to get treatment would probably be in the  
2 Department of Corrections where he can get perhaps 24-hour  
3 treatment, wouldn't have to worry about him having any type  
4 of a relapse, assuming that there is no drugs in the  
5 Department of Corrections, or that he is going to be limited  
6 to getting drugs in the Department of Corrections. He can  
7 certainly receive his counseling there where he can focus  
8 100 percent of his attention on his problem rather than the  
9 distractions that he apparently encounters while he is out  
10 of custody.

11 THE COURT: Do you have a T.A.S.C. report? Let me see  
12 it. Anything else from either side?

13 MR. PLATEK: Your Honor, just briefly. The report goes  
14 on to say that he is acceptable, but it refers -- it's very  
15 generic in nature. He is acceptable based on the fact that  
16 he has volunteered for it, that there appears to be a nexus  
17 between his substance abuse and criminal activity. That's  
18 very generic and nonspecific. There isn't anything in the  
19 report that indicates why they think that he will be likely  
20 to be rehabilitated and be able to complete the program. In  
21 fact, in one sentence they refer to him -- they misrefer to  
22 him, they refer to him as her. I don't think this  
23 specifically addresses his problem and his likelihood of  
24 success.

1           THE COURT: Four prior felony dispositions for  
2 drug-related offenses, three of which resulted in time in  
3 DOC. I remember the case very well. Mr. Holmes has some  
4 serious health problems, does he not?

5           MR. STRZELECKI: That's correct.

6           THE COURT: I have a problem with the T.A.S.C. report  
7 because looking at his prior record, those drug cases go  
8 back to 1978, 23 years, and yet they are not recommending  
9 in-patient. I, for the life of me, can't figure out how  
10 that could possibly be. I have been around long enough to  
11 know what's going to happen if Mr. Holmes gets released. I  
12 don't care if he is on any kind of an outpatient substance  
13 abuse treatment plan, the first thing he is going to do is  
14 head to some street corner and pick up some crack, no doubt  
15 about it. I am absolutely convinced of that.

16           Is there anything that prohibits me from  
17 sentencing him to residential T.A.S.C. treatment in spite of  
18 the report? I think it's clear that he has a drug abuse  
19 problem, no doubt about it, and at his age and health  
20 condition, I really hate to send him to DOC, although I have  
21 already done that. I would consider the T.A.S.C. if it's  
22 residential because it's not going to work without it, if it  
23 even works with it, but I will give him the benefit on that  
24 possibly. Anything that prohibits me from doing that?

1 MR. STRZELECKI: Your Honor, I am not aware of anything  
2 by statute that would prohibit you from sentencing him to  
3 T.A.S.C. in-patient treatment.

4 THE COURT: I tell you what. I will take the matter  
5 under advisement further. You come back with a report that  
6 tells me whether they will take him residentially extended  
7 period of time. I am not talking about two weeks and he is  
8 back out again. I want three to six months minimum, and if  
9 they will do that, I will further consider my alternatives  
10 here. How much time will it take you to get that answer?

11 MR. STRZELECKI: Your Honor, I am going to ask for a  
12 two-week date.

13 THE COURT: Okay. I won't be here in two weeks. How  
14 about three, is that all right?

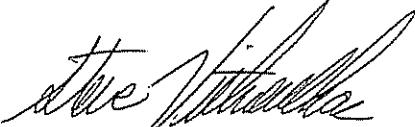
15 MR. STRZELECKI: That will be sufficient, your Honor.  
16 Thank you.

17 THE COURT: I will make it November 1st at 9:30 for  
18 decision on the motion to reconsider.

19 (AND THOSE WERE ALL THE PROCEEDINGS HAD.)

1 STATE OF ILLINOIS )  
2 COUNTY OF W I L L ) SS.  
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7 I, STEVE VITHOULKAS, Official Court Reporter for  
8 the 12th Judicial Circuit, Will County, Illinois, do hereby  
9 certify that I reported in shorthand as such official court  
10 reporter the foregoing proceedings had before the Honorable  
11 DANIEL J. ROZAK, Judge of said Court in the above-entitled  
12 cause on the 11th day of October, 2001, and thereafter  
13 caused to be transcribed into typewriting the foregoing  
14 transcript which I hereby certify is a true and correct  
15 transcription of my shorthand notes so taken of the evidence  
16 offered and received on said date.

17  
18  
19  
20  


21 STEVE VITHOULKAS  
Official Court Reporter.  
22  
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12/12/2002 12:17 FAX 8157278896

WILL CO CIR CLK

018

COURT DOCKET - WILL COUNTY CIRCUIT CLERK

4 CSP048

Date: 12/12/2002

Time: 12/13/43

Page: 4

From 0/00/0000 To 99/99/9

User: ALCS

2001 CF 000459 Judge: ROZAK DANIEL J

Date  
 7/09/2001 No Fine & Cost .00  
 Judge:ROZAK DANIEL J

7/09/2001 Disposition 03/00 Count 001 No Fine & Cost Signed  
 Judge ROZAK DANIEL J Defendant HOLMES EDWARD C Atty STRZELECKI JASC  
 Asst States Attorney HARVEY FREDERICK V  
 Disposition: Guilty POSS AMT CON SUB EXCEPT(A) / (D)  
 Disposition Type: Guilty Plea Defendant Plea: Guilty  
 Statute 720 570/402(c) Class 4 Orig.  
 Sentence: 07/09/2001  
 Sentence: Awaiting Sentencing Sentence In Force  
 No Fine & Cost .00  
 Judge:ROZAK DANIEL J

8/15/2001 Notice of Motion FILED BY Atty STRZELECKI JASON R

8/15/2001 Motion TO ELECT TREATMENT

9/13/2001 People of the State of Illinois present by FREDERICK V. HARVEY.  
 Defendant appears in person and by JASON R. STRZELECKI. Matter  
 comes on for sentencing. Court is in receipt of Pre-Sentence  
 Investigation Report. Defense files a Petition to Elect  
 Treatment. Arguments and suggestions heard. Court sentences the  
 defendant to 3 years in the Illinois Department of Corrections.  
 Defendant shall receive credit for 2 days actually served.  
 Defense Petition to Elect Treatment is Granted. Matter is  
 continued for hearing. Defendants Bond is Revoked. Defendant  
 Remanded. Mittimus to Sheriff.  
 Hearing Oct 11, 2001 09:30AM Rm404 Judge ROZAK  
 Judge:ROZAK DANIEL J Rep:RIMKEVICIUS ANNA MAR Clerk:DAWS M

9/17/2001 Sheriff Fee Filed Sep 15, 2001 Judge ROZAK Amt \$41.00

10/04/2001 Notice of Motion FILED BY Atty STRZELECKI JASON R

10/04/2001 Motion TO RECONSIDER SENTENCE

10/10/2001 Impounded Document - T.A.S.C. Report dated October 9, 2001

10/11/2001 Sheriff's Fee Bill Amt \$10.00

10/11/2001 Sheriff's Fee Bill Amt \$10.00

10/11/2001 People of the State of Illinois present by STEVEN T. PLATEK.  
 Defendant appears in custody of the Will County Sheriff and by  
 JASON R. STRZELECKI. Matter comes on for hearing on Defense  
 Motion to Reconsider Sentence. Arguments heard. Court takes  
 matter under advisement. (Awaiting TASC in-patient treatment)  
 Defendant Remanded.  
 Under Advisement Nov 01, 2001 09:30AM Rm404 Judge ROZAK Canceled..  
 Judge:ROZAK DANIEL J Rep:VITHOULKAS STEVE Clerk:DAWS M

EXHIBIT

C

12/12/2002 12:17 FAX 8157278896

WILL CO CIR CLK

019

COURT DOCKET - WILL COUNTY CIRCUIT CLERK

5 CSP048

Date: 12/12/2002

Time: 12/13/43

Page: 5

2001 CF 000459 Judge: ROZAK DANIEL J

From 0/00/0000 To 99/99/9  
User: ALCSDate  
10/12/2001

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People of the State of Illinois present by FREDERICK V. HARVEY. Defendant appears in custody of the Will County Sheriff and by JASON R. STRZELECKI. Matter comes on for Defense Motion to Reconsider Sentence. Arguments having been heard. Court grants Defense Motion. The 3 year Sentence to the Department of Corrections is Vacated. Court reviews the Pre-Sentence Investigation Report. Court Sentences the defendant to 60 months T.A.S.C. Probation. Defendant shall pay Court Costs in the amount of \$340.00; Drug Related Fine of \$100.00; Street Value Fine of \$10.00; Drug Assessment Fee of \$500.00 and Crime Lab Fee of \$50.00; bond to apply. Bond is ReInstituted. Remaining bond is ordered refunded to surety. The defendant is ordered to comply with recommendations made by T.A.S.C. The defendant is advised of and understands the appellate rights. Probation is to monitor. Matter is continued for termination.

Judge:ROZAK DANIEL J Rep:DANLEY JENNIFER Clerk:DAWS M

10/12/2001 See Probation Order Signed

10/12/2001 See Order Signed

10/12/2001 Sheriff's Fee Bill Amt \$10.00

10/12/2001 Disposition 03/01 Count 001 Fine & Cost Total Fee \$1000.00 Signed Judge ROZAK DANIEL J Defendant HOLMES EDWARD C Atty STRZELECKI JAS Asst States Attorney HARVEY FREDERICK V

Disposition: Guilty Plea/Ch. 111.5, Par.6360-2 POSS AMT CON SUB EXCEI  
Disposition Type: Court Action Defendant Plea: Guilty  
Statute 720 570/402(c) Class 4 Orig.

Sentence: 10/12/2001

Sentence: Jail 30Days Sentence In Force

Sentence: Probation 60Mos Sentence In Force

Sentence: Credit Time Served 30Days Sentence In Force

Sentence: Fines and/or Cost/Penalties and Fees Sentence In Force

Sentence: Drug Addiction Treatment Sentence In Force

Fine & Cost Total	445.00	DRUG FUND-JUVENILE	1.25
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DRUG FUND-COUNTY	3.75	DRUG FUND-ASSESSMEN	500.00
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CRIME LAB	50.00	COURT ORDERED COSTS	.00
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Status:Closed Report:Terminated Oct 12,2001

Termination Oct 12,2006 09:30AM Rm404 Judge ROZAK

Judge:ROZAK DANIEL J

10/18/2001 Court Ordered Payments Fee \$1000.00 Amt \$1000.00 Bond Used  
Defendant HOLMES EDWARD C

2/15/2002 Probation Report-requesting status/progress report FILED BY  
WILL COUNTY ADULT PROBATION DE

0000022